IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.139 OF 2003

Smt. Santana Benedito
Fernandes, r/o Augostino
Wado, St. Cruz, Ilhas-Goa. ... Applicant.

versus

State of Goa
through P.I. attached to
Old Goa Police Station. ... Respondent.

Mr. Menino Teles, Advocate for the Applicant.

Mrs. Winnie Coutinho, Additional Public Prosecutor
for the State.

CORAM: P. V. HARDAS, J.

DATED: 4TH JULY, 2003.

ORAL JUDGMENT

By consent of parties, this application is taken up for final disposal at the stage of Admission.

2. This is an application under Section 482 of the Code of Criminal Procedure filed by the Applicant assailinng the Order of the learned Judicial Magistrate, First Class at Panaji, dated 22nd April, 2003, in Criminal Miscellaneous Application No.25/03/C and the Order of the learned II Additional Sessions Judge, Panaji, in Criminal Revision Application

No.46/2003, dated 29th May, 2003. The Applicant had filed an application before the learned Judicial Magistrate, First Class at Panaji under Section 457 of the Code of Criminal Procedure for releasing the vehicle namely Maruti Car bearing registration No.GA-01/S-1700 which was seized by the Police on 13th April, 2003 in connection with Crime No.36/03 registered under Section 379 of the Indian Penal Code, on the ground that two wheels with radial tyres were found in the said car. Admittedly, the stolen property namely two wheels with tyres have been seized by the Police during investigation.

3. The learned Judicial Magistrate, First Class at Panaji by his Order impugned in the present application rejected the plea of the present Applicant on the ground (I) the son of the Applicant who was said to be driving the said car was absconding. (II) Presence of the said car was required for investigation and in case the car is released evidentiary value will be lost. The Applicant/Accused being aggrieved by the aforesaid Order filed Criminal Revision Application No.46/2003, which came to be rejected by the IInd Additional Sessions Judge, Panaji, by Judgment dated 29th May, 2003, principally on the ground that the Order passed by the learned Judge was interlocutory in nature and, therefore, no

revision would lie assailing the same. Hence, the present application under Section 482 of the Code of Criminal Procedure.

4. I have heard Mr. Menino Teles, learned Counsel appearing on behalf of the Applicant and Mrs. Winnie Coutinho, learned Additional Public Prosecutor appearing on behalf of the State. Admittely, the Applicant/Accused is the registered owner of the said Maruti Car bearing No.GA-01/S-1700 which was seized from the residence of the present Applicant. Also admittedly, the Police during the course of investigation has seized the stolen property namely two wheels with tyres valued at Rs.5000/- which according to the prosecution were found kept in the said car. During the investigation, it has transpired that the son of the Applicant may be responsible for the theft of the stolen property and the said son is said to be absconding. Admittedly, there is nothing in the investigation which would point a finger of suspicion at the present Applicant. It defies credibulity as to how if the vehicle is released, the same would affect the evidentiary value of either the allegationns of the prosecution or the stolen property which is seized. The detention of the vehicle in the Police Station is wholly unwarranted. The said vehicle cannot advance the investigation any further.

The further detention is also likely to reduce or adversely affect the value of the said car. The detention of the vehicle is also not necessary for further investigation. Merely because the son of the Applicant is absconding cannot be a ground to release the vehicle.

5. For the aforesaid reasons, the Order of the learned Judicial Magistrate, First Class at Panaji, dated 22nd April, 2003, in Criminal Miscellaneous Application No.25/03/C is hereby quashed and set aside. The said car seized by the Police on 13th April, 2003 be released to the Applicant on furnishing a Bond in the sum of Rs.1,60,000/- on conditions amongst others that the Applicant shall not part with the possession of the vehicle till the decision of the trial.

6. Criminal Miscellaneous Application No.139 of 2003 is allowed accordingly.

P. V. HARDAS, J.

RD.